

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167, As Amended in the Senate

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLE DEALERS AND SALESMEN; AMENDING SECTION 49-1603, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO A NONVOTING MEMBER OF THE DEALER ADVISORY BOARD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608B, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE IDAHO CONSUMER ASSET RECOVERY FUND, TO ESTABLISH PROVISIONS RELATING TO EXPENDITURES FROM SUCH FUND AND TO ESTABLISH PROVISIONS RELATING TO CLAIMS AGAINST SUCH FUND; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608C, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE CREATION OF THE IDAHO CONSUMER ASSET RECOVERY CONTROL BOARD AND TO ESTABLISH PROVISIONS RELATING TO FEES; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608D, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO CERTAIN APPLICANTS MAINTAINING A LICENSE BOND AND TO ESTABLISH PROVISIONS RELATING TO THE SUSPENSION OF FEES; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608E, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE SUBMISSION OF CLAIMS TO THE BOARD, TO ESTABLISH PROVISIONS RELATING TO PAYMENT OF CLAIMS AND TO ESTABLISH PROVISIONS RELATING TO SERVICE; AND AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1608F, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE PAYMENT OF CLAIMS, TO ESTABLISH PROVISIONS RELATING TO MAXIMUM AMOUNTS OF CLAIMS, TO ESTABLISH PROVISIONS RELATING TO THE BOARD WITHHOLDING PAYMENT OF CERTAIN CLAIMS, TO ESTABLISH PROVISIONS RELATING TO PRORATING CERTAIN CLAIMS, TO ESTABLISH PROVISIONS RELATING TO INSUFFICIENT MONEYS IN THE FUND, TO ESTABLISH PROVISIONS RELATING TO CERTAIN REIMBURSEMENTS TO THE FUND, TO PROVIDE FOR LIMITATIONS OF THE APPLICATION OF LAW AND TO PROVIDE FOR RULES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1603, Idaho Code, be, and the same is hereby amended to read as follows:

49-1603. DEALER ADVISORY BOARD -- DUTIES. (1) There shall be a dealer advisory board to consist of eleven (11) members to assist and advise the department in the administration of the provisions of this chapter. Five (5) members shall be appointed from licensed dealers selling new vehicles, four (4) members appointed from licensed dealers selling used vehicles, one (1) member shall be appointed from licensed dealers selling new recreational vehicles and one (1) ~~nonvoting~~ member shall be appointed to represent new and used motorcycle and ATV dealers. The governor shall appoint the board with consideration to recommendations of the board of directors of the Idaho Automobile Dealers Association, recommendations of the board of directors of the Recreational Vehicle Dealers Association of Idaho and recom-

1 mendations of the ~~I~~independent ~~D~~dealer ~~A~~association representing used vehi-
 2 cle dealers. ~~The member who represents the new and used motorcycle and ATV~~
 3 ~~dealers shall be a nonvoting member of the board and shall not have a vote on~~
 4 ~~any question, matter or thing referred to the advisory board by the depart-~~
 5 ~~ment.~~ The term of office of each member shall be three (3) years. Vacancies
 6 occurring on the board other than by expiration of the term shall be filled
 7 for the unexpired term only, and each member of the board shall serve un-
 8 til his successor is appointed and qualified. Members of the advisory board
 9 shall be compensated as provided by section 59-509(b), Idaho Code, and pay-
 10 ments of compensation shall be paid from the state highway account as part of
 11 the expenses of administering the provisions of this chapter. A majority of
 12 the members of the advisory board shall constitute a quorum, the presence of
 13 which at any meeting duly called by the department shall have full and com-
 14 plete power to act upon and resolve in the name of the advisory board any mat-
 15 ter, thing or question referred to it by the department, or which by reason of
 16 any provisions of this chapter, it has power to determine.

17 (2) The advisory board on the first day of each July, or as soon there-
 18 after as practicable, shall elect a chairman, vice-chairman and secretary
 19 from among its members, who shall hold office until their successors are
 20 elected. As soon as the board has elected its officers, the secretary shall
 21 certify the results of the election to the department. The chairman shall
 22 preside at all meetings of the advisory board and the secretary shall make
 23 a record of their proceedings. All members of the advisory board, ~~except~~
 24 ~~for the nonvoting member who represents the new and used motorcycle and ATV~~
 25 ~~dealers,~~ shall be entitled to vote on any question, matter, or thing which
 26 properly comes before it.

27 SECTION 2. That Chapter 16, Title 49, Idaho Code, be, and the same is
 28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 29 ignated as Section 49-1608B, Idaho Code, and to read as follows:

30 49-1608B. IDAHO CONSUMER ASSET RECOVERY FUND ESTABLISHED -- EXPENDI-
 31 TURES AUTHORIZED. (1) There is hereby created in the state treasury an ac-
 32 count to be known as the "Idaho consumer asset recovery fund" (ICAR), here-
 33 inafter referred to as the "fund." Moneys in the fund are hereby continuously
 34 appropriated to the department and shall be used exclusively to satisfy un-
 35 paid judgments as provided for in section 49-1608C, Idaho Code. The fund
 36 shall consist of moneys appropriated by the legislature and other moneys as
 37 provided for in law. All interest earned on investment by the department of
 38 moneys in the fund shall be returned to the fund.

39 (2) Except as provided for in subsection (3) of this section, moneys
 40 paid out of the fund shall be known as expenditures and shall be limited to
 41 awards based upon claims or final judgments of fraud, fraudulent representa-
 42 tion or any violation of: provisions of this chapter; provisions of chapter
 43 6, title 48, Idaho Code; provisions of chapter 5, title 49, Idaho Code; pro-
 44 visions of section 49-1418, Idaho Code; or provisions of federal motor vehi-
 45 cle safety standards or odometer fraud as provided for in this chapter. All
 46 expenditures from the fund by the board pursuant to the provisions of this
 47 act, including expenditures provided for in subsection (3) of this section,
 48 shall be paid out on warrants drawn by the department upon presentation of

1 proper vouchers approved by the Idaho consumer asset recovery control board
2 as established in section 49-1608C, Idaho Code.

3 (3) Notwithstanding any other provision of this act, no expenditures
4 shall be made from the fund until the fund has accumulated one (1) full year
5 of fees. When the fund reaches or exceeds two million dollars (\$2,000,000),
6 the fee provided for in section 49-1608C, Idaho Code, shall be temporarily
7 suspended upon approval of the Idaho consumer asset recovery control board.

8 (4) Claims made against a dealer with an existing bond, pursuant to sec-
9 tion 49-1608, Idaho Code, shall first be paid by the bond before claims may be
10 approved for payment by the board from the fund. From July 1, 2013, through
11 June 30, 2014, all dealers shall be required to maintain the surety bond re-
12 quired pursuant to the provisions of 49-1608, Idaho Code.

13 SECTION 3. That Chapter 16, Title 49, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 49-1608C, Idaho Code, and to read as follows:

16 49-1608C. CREATION OF BOARD AND FEES. (1) The Idaho consumer asset re-
17 covery fund (ICAR) shall be administered by the Idaho consumer asset recov-
18 ery control board, hereinafter referred to as the "board." The board shall be
19 comprised of the director of the Idaho transportation department or his de-
20 signee and the dealer advisory board or their designee(s), as established by
21 section 49-1603, Idaho Code.

22 (2) In addition to fees authorized pursuant to section 49-1607, Idaho
23 Code, and in addition to any fees authorized elsewhere in this chapter, the
24 Idaho consumer asset recovery control board shall establish a fee to be col-
25 lected from each applicant for a new or renewing license issued pursuant to
26 this chapter. The fee provided for in this section shall be charged for each
27 applicant for a motor vehicle dealer's license and the amount of such fee
28 shall be set annually by the board. In setting the amount of the fee, the
29 board shall take into consideration the balance of the fund and expenditures
30 of moneys from the fund by all required participants. All fees collected
31 pursuant to the provisions of this section shall be paid into the Idaho con-
32 sumer asset recovery fund as established in section 49-1608B, Idaho Code.
33 The department shall maintain an accurate record of all transactions involv-
34 ing the fund and report to the board at each meeting.

35 SECTION 4. That Chapter 16, Title 49, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 49-1608D, Idaho Code, and to read as follows:

38 49-1608D. NEW APPLICANTS AND SUSPENSION OF FEES. In addition to the
39 fees collected pursuant to section 49-1608C, Idaho Code, applicants for an
40 initial motor vehicle dealer's license shall maintain a license bond pur-
41 suant to section 49-1608, Idaho Code, for three (3) consecutive years. If
42 the fee has been temporarily suspended pursuant to section 49-1608B(3),
43 Idaho Code, the new dealer shall pay the last set fee into the fund during the
44 initial three (3) year licensing period. Only those renewing licensees who
45 have not been the subject of a claim against their bond or against the fund
46 for three (3) consecutive years shall be exempt from the requirement to main-

tain such bond as required pursuant to the provisions of section 49-1608, Idaho Code.

SECTION 5. That Chapter 16, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-1608E, Idaho Code, and to read as follows:

49-1608E. SUBMISSION OF CLAIMS. (1) Except as otherwise provided in this section, whenever any person is awarded a final judgment certified in a court of competent jurisdiction in the state of Idaho for:

(a) Any actual loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed motor vehicle dealer; or

(b) Any actual loss or damage by reason of a violation by a dealer of any of the provisions of chapter 6, title 48, Idaho Code, chapter 5, title 49, Idaho Code, or section 49-1418, Idaho Code, in connection with the purchase or lease of a motor vehicle on or after July 1, 2014, the judgment creditor may file a verified claim with the board requesting payment from the fund of the amount unpaid on the judgment subject to the following conditions:

(i) Unless the judgment has been appealed, the claim shall be filed with the department, acting on behalf of the board, no sooner than forty-five (45) days and no later than one (1) year after the judgment becomes final.

(ii) The board shall not consider claims submitted by motor vehicle dealers, financial institutions or institutions providing floorplans for motor vehicle dealers.

(2) To be eligible to receive any payment from the fund, any action instituted by a person against a licensee that may become a claim against the fund shall be served to the board in a manner consistent with the provisions of section 48-613, Idaho Code.

SECTION 6. That Chapter 16, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-1608F, Idaho Code, and to read as follows:

49-1608F. PAYMENT OF CLAIMS -- MAXIMUM. (1) The maximum claim of one (1) judgment creditor against the fund, based on an unpaid certified judgment arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E, Idaho Code, involving a single transaction, shall be limited to fifty thousand dollars (\$50,000), regardless of the amount of the unpaid certified final judgment of one (1) judgment creditor.

(2) The aggregate of claims against the fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted pursuant to section 49-1608E, Idaho Code, involving more than one (1) transaction shall be limited to one hundred twenty thousand dollars (\$120,000) per licensee, regardless of the total amounts of the unpaid certified judgments of judgment creditors.

(3) If a claim has been made against the fund, and the board has reason to believe that there may be additional claims against the fund from other transactions involving the same licensee, the board may withhold any

1 payment from the fund involving the licensee for a period not to exceed the
2 end of the relevant license period. After this period, if the aggregate of
3 claims against the licensee exceeds one hundred twenty thousand dollars
4 (\$120,000), a total of one hundred twenty thousand dollars (\$120,000) shall
5 be prorated among the claimants and paid from the fund in proportion to the
6 amounts of their unpaid certified judgments against the licensee.

7 (4) (a) Claims against motor vehicle dealers or their salespersons par-
8 ticipating in the Idaho consumer asset recovery fund pursuant to sec-
9 tion 49-1608E, Idaho Code, shall be prorated when the aggregate exceeds
10 one hundred twenty thousand dollars (\$120,000) against one (1) dealer.

11 (b) Claims shall be prorated only after the dealer's twenty thousand
12 dollar (\$20,000) bond has been exhausted and utilized first. Such addi-
13 tional claims shall be prorated when the aggregate exceeds one hundred
14 thousand dollars (\$100,000) against one (1) dealer.

15 (5) Upon receipt of a certified judgment filed in support of a claim
16 against the fund, the board shall send written notice to the licensee who is
17 the subject of the unpaid judgment that a claim has been filed and that the
18 licensee should satisfy the unpaid judgment. If the unpaid judgment is not
19 fully satisfied within thirty (30) days following the date of the written no-
20 tice by the board, the board shall make payment from the fund subject to the
21 other limitations provided for in this act.

22 (6) If at any time the fund is insufficient to fully satisfy any claims
23 or claim filed with the board and authorized by this act, the board shall pay
24 such claim, claims or portion thereof to the claimants in the order that the
25 claims were filed with the board.

26 (7) On payment by the board to a claimant from the fund, the board shall,
27 within five (5) business days, notify the licensee in writing of the board's
28 payment to the claimant and request full reimbursement be made to the board
29 within thirty (30) days of the notification. Failure to reimburse the fund
30 in full within the specified period shall be grounds for suspension or revo-
31 cation of the license pursuant to title 49, chapter 16, Idaho Code. Any per-
32 son whose license is revoked shall not be eligible to apply for a license as
33 a motor vehicle dealer or for a license as a salesperson until the person has
34 repaid in full the amount paid from the fund on his account, plus interest to
35 be calculated pursuant to the provisions of section 28-22-104, Idaho Code.

36 (8) Nothing contained in this article shall limit the authority of the
37 department to take disciplinary action against any licensee for any viola-
38 tion of this chapter or any rule promulgated thereunder, nor shall full re-
39 payment of the amount paid from the fund on a licensee's account nullify or
40 modify the effect of any disciplinary action against that licensee for any
41 violation.

42 (9) The department is authorized to promulgate reasonable rules not in-
43 consistent with this chapter for the purpose of carrying out the provisions
44 of this section.